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CORPORATION TRUST COMPANY.

REORGANIZATIONS, MERGERS, CONSOLIDATIONS
ADVANTAGES OF 1921 REVENUE ACT.



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REORGANIZATIONS MERGERS CONSOLIDATIONS

ADVANTAGES OF

1921 REVENUE ACT

Amendments to the Income Tax Law Remove Tax on Stockholders upon Incorporation, Remove Former Taxes Levied upon Corporations and Stockholders when Reorganized, and Reduce Stamp Tax on Issue of Non-par Value Shares.

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THE
CORPORATION TRUST COMPANY

[The official data herein contained
are corrected to April 13, 1922.]

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FOREWORD

As a ready reference for the use of attorneys when considering organization, reorganization, merger, or consolidation, as affected by the Federal Income Tax Law, we have prepared this pamphlet containing all of the official matter issued to April 13, 1922.

We do not, in this pamphlet, express any conclusions of our own, but merely have collected the departmental rulings and regulations.

We welcome the opportunity of assisting members of the bar in corporation matters and shall be glad to have any lawyer take up with us questions concerning the organization or reorganization of a company. We are prepared to furnish information as to the requirements of all of the states, as well as to advise members of the bar of any rulings of the Treasury Department promulgated since the issuance of this pamphlet.

In reorganizations and mergers the services of an experienced Trust and Transfer Department are indispensable, especially in receiving and reissuing securities. We offer you the facilities of our Trust and Transfer Department, one by experience and equipment capable of handling all details.

THE CORPORATION TRUST COMPANY

April 13, 1922.

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“Incorporation Effects Big Saving”

“The repeal of the excess profits tax will, in many instances, influence persons who have heretofore conducted business as individuals or partnerships to incorporate. The income of a growing concern, for example, wherein the accumulated earnings are required for the expansion of such business, and retained therein, will be subject only to the normal tax of $12\frac{1}{2}$ per cent. after January 1, 1922. This inducement will continue so long as the surtax rates remain comparatively high.

“Under the rates effective for 1922 three persons constituting a partnership, participating equally in the profits, having a total net income of \$300,000, would each pay a tax of \$30,140, or a total tax of \$90,420. If incorporated, the corporation would pay only a normal tax of $12\frac{1}{2}$ per cent., amounting to \$37,500. Moreover, all of the income from Liberty bond interest would be free of taxes to the corporation, which would result in a further saving.

* * * * *

“The foregoing comparative examples are computed on the basis of no profit being distributed.”—Godfrey N. Nelson in *New York Times*, December 6, 1921.

OUTSTANDING IMPORTANT AMENDMENTS TO REVENUE ACT OF INTEREST TO THOSE ORGANIZING AND REORGANIZING CORPORATIONS

*Reprint from The Corporation Trust Company Journal,
December, 1921*

Without going into detail of the many phases of the 1921 Revenue Act, there seem to be three matters of outstanding importance to the organizers and reorganizers of corporations. These are as follows:

(1) Section 202 of the Income Tax Law before the amendment of 1921 provided upon reorganization or consolidation, where the aggregate par or face value of new stock received was in excess of that turned in, the person turning in the same was subject to tax on the amount of shares received in excess of the par or face value turned in. This feature of the act was a great discouragement in the organization of new corporations taking over interests in old ones, and to reorganizations generally. This section is now amended so that it provides that "when in the reorganization of one or more corporations a person receives in place of any stock or securities owned by him, stock or securities in a corporation a party to or resulting from such reorganization" no gain or loss shall be recognized "even if the property received in exchange has a readily realizable market value." The act defines reorganization so as to include an instance where there is an acquisition by one corporation of at least (1) a majority of the voting stock and (2) a majority of the total number of shares of all other classes, or of substantially all the properties of another. The term also includes recapitalization.

(2) The matter of receiving stock upon the original organization of a corporation in exchange for property is changed so that even *where the stock received has a market value*, no tax is imposed where those transferring their property secure control of the company in exchange for their property. ("In control" is construed to mean "when owning at least 80% of the voting stock and at least 80% of the total number of shares of all the classes of stock of the corporation.")

(3) Another outstanding important amendment is the one reducing the stamp tax on the issue of shares of non-par value when the actual value is less than \$100 per share. The act as amended imposes a tax of 5c per share "unless the actual value is in excess of \$100 per share, in which case the tax shall be 5c on each \$100 of actual value or fraction thereof, *or unless the actual value is less than \$100 per share, in which case the tax shall be 1c on each \$20 of actual value, or fraction thereof.*" (Schedule A, Stamp Taxes, Page 9 herein.)

Extracts from the Law and Regulations

LAW PROVISIONS

Revenue Act of 1921.

Basis for Determining Gain or Loss.

Sec. 202 (a) * * *

(c) For the purposes of this title, on an exchange of property, real, personal or mixed, for any other such property, no gain or loss shall be recognized unless the property received in exchange has a readily realizable market value; but even if the property received in exchange has a readily realizable market value, no gain or loss shall be recognized—

(1) When any such property held for investment, or for productive use in trade or business (not including stock-in-trade or other property held primarily for sale), is exchanged for property of a like kind or use;

(2) When in the reorganization of one or more corporations a person receives in place of any stock or securities owned by him, stock or securities in a corporation a party to or resulting from such reorganization. The word "reorganization," as used in this paragraph, includes a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or of substantially all the properties of another corporation), recapitalization, or mere change in identity, form, or place of organization of a corporation, (however effected); or

(3) When (a) a person transfers any property, real, personal or mixed, to a corporation, and immediately after the transfer is in control of such corporation, or (b) two or more persons transfer any such property to a corporation, and immediately after the transfer are in control of such corporation, and the amounts of stock, securities, or both, received by such persons are in substantially the same proportion as their interests in the property before such transfer. For the purposes of this paragraph, a person is, or two or more persons are, "in control" of a corporation when owning at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

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(d) (1) Where property is exchanged for other property and no gain or loss is recognized under the provisions of subdivision (c), the property received shall, for the purposes of this section, be treated as taking the place of the property exchanged therefor, except as provided in subdivision (e);

(2) Where property is compulsorily or involuntarily converted into cash or its equivalent in the manner described in paragraph (12) of subdivision (a) of section 214 and paragraph (14) of subdivision (a) of section 234, and the taxpayer proceeds in good faith to expend or set aside the proceeds of such conversion in the form and in the manner therein provided, the property acquired shall, for the purpose of this section, be treated as taking the place of a like proportion of the property converted;

(3) Where no deduction is allowed for a loss or a part thereof under the provisions of paragraph (5) of subdivision (a) of section 214 and paragraph (4) of subdivision (a) of section 234, that part of the property acquired with relation to which such loss is disallowed shall for the purposes of this section be treated as taking the place of the property sold or disposed of.

(e) Where property is exchanged for other property which has no readily realizable market value, together with money or other property which has a readily realizable market value, then the money or the fair market value of the property having such readily realizable market value received in exchange shall be applied against and reduce the basis, provided in this section, of the property exchanged, and if in excess of such basis, shall be taxable to the extent of the excess; but when property is exchanged for property specified in paragraphs (1), (2), and (3) of subdivision (c) as received in exchange, together with money or other property of a readily realizable market value other than that specified in such paragraphs, the money or the fair market value of such other property received in exchange shall be applied against and reduce the basis, provided in this section, of the property exchanged, and if in excess of such basis, shall be taxable to the extent of the excess.

Regulations No. 62, Released March 1, 1922

Exchange of property.—Gain or loss arising from the acquisition and subsequent disposition of property is realized only when as the result of a transaction between the owner and another person the property is converted into other property (a) that is essentially different from the property disposed of, and (b) that has a readily realizable market value. Property has a readily realizable market value if it can be readily converted into an amount of cash or its equivalent substantially equal to the fair value of the property. In other words, the property received in exchange must be readily marketable at substantially its fair value in order that a gain or loss be

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recognized. Property which is regularly traded in in a public market has a readily realizable market value in the quantities regularly traded in. Property may be salable, as in the case of a forced sale or in exceptional quantities, without having a readily realizable market value. Stock in a close corporation may or may not have a readily realizable market value, depending upon all the facts in each particular case. The question whether property has a readily realizable market value, and if so the amount thereof, is one of fact to be determined in each case in the light of all the surrounding circumstances; and attention should be called in the return to each exchange effected during the taxable year about which there could be any doubt. (Article 1564 of Reg. 62, 1922 Edition.)

Exchange of property which results in no gain or loss.—Where property is exchanged for other property, even if the property received in exchange has a readily realizable market value, no gain or loss is recognized:

(a) Where property held for investment is exchanged for other property of a like kind, or where property held for productive use in trade or business is exchanged for other property of a like use. The words "like kind" are defined as having reference to the nature or character of the property and not its grade or quality. Therefore under this paragraph no gain or loss is realized by one other than a dealer from the exchange of real estate for real estate, or from the exchange of evidences of indebtedness (such as bonds and notes) for evidences of indebtedness, or from the exchange of shares of stock for other shares of stock; but one kind or class of property may not, under this paragraph, be exchanged for property of a different kind or class, as shares of stock for bonds, or real estate for personal property. Where evidences of indebtedness are exchanged for other evidences of indebtedness, the fact that any of the evidences of indebtedness involved in such exchange are secured by mortgage or other lien, or the fact that any real estate involved in an exchange is improved or unimproved makes no difference, for such facts relate only to grade or quality of the property and not to its kind or class. There is excluded from the provisions of this paragraph stock-in-trade or other property held primarily for sale. Unproductive real estate held by one other than a dealer, for future use or future realization of the increment in value, is held for investment and not primarily for sale.

(b) When in the reorganization of one or more corporations a person receives in place of any stock or securities owned by him, stock or securities in a corporation a party to or resulting from such reorganization. The word "reorganization" as used in this paragraph includes a merger or consolidation (including the acquisition by one corporation of at least a majority of the outstanding voting stock and at least a majority of the total number of outstanding shares of all other classes of stock of another corporation, or of substantially all the

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properties of another corporation), recapitalization, or mere change in identity, form, or place of organization of a corporation, however effected. Under this paragraph it makes no difference whether the stock or securities received are or are not of a like kind or class. So long as the property received in the reorganization consists of stock or securities within the usual meaning and acceptance of these terms, no gain or loss is recognized. Where two or more corporations unite their properties, by either (1) the dissolution of corporation B and the sale of its assets to corporation A, or (2) the sale of its property by B to A, or (3) the sale of the stock of B to A, or (4) the merger of B into A, or (5) the consolidation of A and B, or (6) the acquisition by A of a majority of the voting stock and a majority of the total number of shares of all other classes of stock of B or of substantially all of the properties of B, no taxable income is received from the transaction by A or B or by the stockholders of either corporation A or corporation B, provided the sole consideration received by the stockholders is stock or securities of corporations A or B or any corporation a party to or resulting from the reorganization. Where in connection with an internal adjustment of the affairs of a corporation, either by recapitalization or a change in identity, form, or domicile (however effected), a person receives in place of the stock or securities owned by him new stock or securities of the corporation, no gain or loss is realized. In this connection, see article 1568.

(c) When (A) a person transfers any property, real, personal, or mixed, to a corporation, and immediately after the transfer is in control of such corporation, or (B) two or more persons transfer any such property to a corporation, and immediately after the transfer are in control of such corporation, and the amounts of stock, securities, or both, received by such persons are in substantially the same proportion as their interests in the property before such transfer. For the purposes of this paragraph, a person is, or two or more persons are, "in control" of a corporation when owning at least 80 per cent of the outstanding voting stock and at least 80 per cent of the total number of outstanding shares of all other classes of stock of the corporation.

Examples.—(1) A and B each own an undivided one-half interest in certain property. Corporation X is created, to which A and B transfer the property, each receiving in exchange therefor 50 per cent of the stock of the corporation X. No gain or loss is realized from this exchange.

(2) A, who owns common stock in the X corporation of the par value of \$70,000, transfers certain property to the corporation, for which he received additional common stock of the par value of \$15,000. The X corporation has outstanding immediately after the transfer only common stock of the par value of \$100,000. No gain or loss is realized from this exchange.

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(3) A owns certain property which he transfers to the corporation X, a going concern, in which he owns common stock of the par value of \$280,000 and class A nonvoting preferred stock of the par value of \$190,000. A receives in exchange for the property common stock of the par value of \$70,000. The X corporation immediately after the transfer has outstanding common stock of the par value of \$400,000, class A nonvoting preferred stock of the par value of \$200,000 and class B nonvoting preferred stock of the par value of \$25,000. No gain or loss is realized from this exchange.

(4) A owns certain property which he transfers to corporation X, a going concern, in which A owns no stock; in exchange for common stock of the corporation of the par value of \$170,000. The X corporation has outstanding immediately after the transfer common stock of the par value of \$200,000 and nonvoting preferred stock of the par value of \$50,000. A realized a gain or loss from this exchange measured by the difference between the basis of the property exchanged and the fair market value, if readily realizable, of the stock received in the exchange. If the property exchanged was acquired prior to March 1, 1913, see article 1561. (Article 1566 of Reg. 62, 1922 Edition.)

Gain or loss from subsequent sale.—(a) Where property is exchanged for other property and no gain or loss is recognized under articles 1564 or 1566 the property received shall for the purpose of determining gain or loss from its subsequent sale be treated as taking the place of the property exchanged therefor. But see article 1568. For exchange of property acquired prior to March 1, 1913, see article 1561. If property is exchanged for two kinds of property and no gain or loss is recognized under articles 1564 or 1566 the cost of the original property should be apportioned, if possible, between the two kinds of property received in exchange for the purpose of determining gain or loss upon subsequent sale. If no fair apportionment is practicable, no profit on any subsequent sale of any part of the property received in exchange is realized until out of the proceeds of sale shall have been recovered the entire cost of the original property. When securities of a single class are exchanged for new securities of different classes so that no gain or loss is realized under the provisions of paragraph (b) of article 1566, for the purpose of determining gain or loss on the subsequent sale of any of the new securities the proportion of the original cost, or other basis, to be allocated to each class of new securities is that proportion which the market value of the particular class bears to the market value of all securities received on the date of the exchange. For example, if 100 shares of common stock, par value \$100, are exchanged for 50 shares of preferred and 50 shares of common each of \$100 par value, and the cost of the old stock was \$250 per share, or \$25,000, but the market value of the preferred on the date of the exchange was \$110 per share, or \$5,500 for the 50 shares, and the

market value of the common was \$440 per share or \$22,000 for the 50 shares of common, one-fifth of the original cost, or \$5,000, would be regarded as the cost of the preferred and four-fifths, or \$20,000 as the cost of common. The same method of computation should be used in the case of stock acquired prior to March 1, 1913, in order to ascertain the proportion of such value to be allocated to each class of new securities on that date and the taxable gain or deductible loss should thereafter be computed in accordance with article 1561. (Article 1567 of Reg. 62, 1922 Edition.)

Exchanges of property for other property and money.—Where property is exchanged for other property which has no readily realizable market value, together with money or other property which has a readily realizable market value, then the money or the fair market value of the property having such readily realizable market value received in exchange shall be applied against and reduce the basis, described in articles 1561, 1562, and 1563, of the property exchanged, and if in excess of such basis, shall be taxable to the extent of the excess; but when property is exchanged for property specified in paragraphs (a), (b), and (c) of article 1566 as received in exchange, together with money or other property of a readily realizable market value other than that specified in such paragraphs, the money or the fair market value of such other property received in exchange shall be applied against and reduce the basis (described in articles 1561, 1562, and 1563) of the property exchanged, and if in excess of such basis shall be taxable to the extent of the excess.

Examples.—(1) A changed certain property which he had purchased subsequent to March 1, 1913, for \$5,000, for real estate having no readily realizable market value and \$2,000 in cash. No gain or loss is realized from such exchange. However, if A subsequently sells the real estate, the difference between the amount realized therefor and \$3,000, the basis of the property exchanged reduced by the amount of cash received in the exchange, is taxable gain or deductible loss, as the case may be. See also article 1564.

(2) A exchanged certain property which he had purchased subsequent to March 1, 1913, for \$14,000, for stock having no readily realizable market value and bonds having a readily realizable market value of \$16,000. A realized a taxable gain of \$2,000, the amount by which the fair market value of the bonds exceeds the cost of the property exchanged. The entire amount received from the subsequent sale of the stock received in the exchange constitutes taxable income. See also article 1564.

(3) A, in connection with a reorganization of a corporation, received in place of stock purchased by him subsequent to March 1, 1913, for \$9,000, stock in a corporation a party to the reorganization together with cash in the amount of \$4,000. No gain or loss is

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realized from the exchange. However, if A subsequently sells the stock, the difference between the amount received therefor and \$5,000, the basis of the old stock reduced by the amount of cash received in the exchange, constitutes taxable gain or deductible loss, as the case may be. See also article 1566.

(4) A transferred to a corporation, all of the outstanding stock of which was owned by him, property purchased by him subsequent to March 1, 1913, for \$40,000, in exchange for stock and \$50,000 in cash. A realized from the exchange a taxable gain of \$10,000, the amount by which the amount of the cash exceeds the cost of the property transferred. The entire amount received from the subsequent sale of the stock received in the exchange constitutes taxable income. See also article 1566.

It is assumed in the above examples that the property exchanged was not of a kind properly to be included in inventory. If the property exchanged was acquired prior to March 1, 1913, or by gift, devise, bequest, or inheritance, see articles 1561, 1562, and 1563. (Article 1568 of Reg. 62, 1922 Edition.)

(Revenue Act of 1921.)

TITLE XI.—STAMP TAXES.

SCHEDULE A.—Stamp Taxes.

1. Bonds of indebtedness. * * *

Original Issue of Stock.

2. Capital stock, issued: On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof, or unless the actual value is less than \$100 per share, in which case the tax shall be 1 cent on each \$20 of actual value, or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

(Regulations 40, Revised to March 1, 1922.)

Article 33. "Reorganization" defined for Purposes of Stamp Regulations.

(1) (c) The term "reorganization" includes those business arrangements whereby the stock and bonds of a corporation are read-

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justed as to amount, income, or priority, or the property is sold to a new corporation for new stock and bonds, or is sold by the foreclosure of a mortgage upon it to a purchaser who buys for himself and his associates, and the various proceedings and transactions by which succession of corporations is brought about, and also the proceedings by which existing corporations are continued under a different organization without the creation of a new corporation. (As amended by T. D. 3118, Jan. 15, 1921.)

Article 4. Issues subject to tax.

(1) The issue of a greater number of shares of no par value stock in lieu of a smaller issue of such shares, previously made, or the issue of a greater number of shares of par value stock in lieu of a smaller issue of such shares of the same kind, previously made, whether on organization or reorganization of the issuing corporation, is subject to stamp tax only on the additional shares so issued. (As amended by T. D. 3289, February 21, 1922.)

(h) The issue of certificates of stock upon reorganization of a corporation not expressly provided for in Art. 4 (1) is subject to tax as follows: Preferred stock issued in place of common, or vice versa, or one kind of preferred stock issued in place of another kind of preferred stock, or one kind of common stock issued in place of another kind of common stock, or stock without par value issued in place of stock with par value, or vice versa, is subject to tax on the entire issue. (As amended by T. D. 3289, Feb. 21, 1922.)

(i) The issue of stock by a consolidated corporation in exchange for stock of the consolidating corporations is subject to tax.

(j) The issue of stock, in addition to its already existing stock, by the continuing corporation in case of a merger of corporations, is subject to tax.

Article 5. Issues not subject to tax.

(f) The issue, upon a merger of corporations, of certificates of stock of the same kind in substitution for the old certificates of stock is not subject to tax.

(i) The issue by a corporation of certificates of preferred stock in lieu of outstanding certificates of common stock, or vice versa, or the issue of certificates of preferred stock of one kind in lieu of certificates of preferred stock of another kind, pursuant to the terms of the original charter of the corporation, without other consideration and without change in the amount of the authorized capital stock of the corporation, is not subject to tax. (As amended by T. D. 3289, February 21, 1922.)

Taxable and tax-free issues upon a merger of corporations.—It appears that paragraph (f) of article 5, which is somewhat uncertain,

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requires construction in order to be reconciled with paragraph (j) of article 4. The distinction with respect thereto is clearly drawn in Law Opinion 440 and Solicitor's Opinion 4, Income Tax Bulletin 22-20. In the case of a consolidation of corporations all stock issued by the consolidated or newly created corporation is subject to tax under paragraph (i) of article 4, and no other provision in the Regulations tends to relieve of the tax by reason of substitution or exchange for the stock of the consolidating corporations.

It was held in Law Opinion 440, under a provision of the Revenue Act of 1917, substantially the same as the pertinent provision in the Revenue Act of 1918, that stock issued by the merging corporation (continuing corporation) in exchange for stock of the merged corporation is subject to tax as an original issue, saying: "It is an original issue of stock that was never issued before. It is immaterial that part of the new stock of one corporation is issued in exchange for old stock of the other corporation." Such rule is considered sound. It is strengthened by the direct language in paragraph (j) of article 4, *supra*, and by the result reached in case of consolidation of corporations and issue of stock, whether or not in exchange, mentioned *supra*. Paragraph (f) of article 5, *supra*, is not necessarily inconsistent therewith.

It is accordingly concluded that paragraph (f) of article 5 of Regulations 40 (revised) exempts stock of the merging corporation (continuing corporation) from the original issue tax when exchanged for the old certificates of stock of such corporation, but not when exchanged for the old certificates of stock of the merged corporation or corporations. (Office Decision No. 83: Ruling No. 198, March, 1921.)

Original issue tax liability on certificate representing more than one share having actual value of less than \$100.—"We ask also that you advise us as to your interpretation of the no-par-value stock-issue tax provided for by Schedule A (2). Where the actual value 'is less than \$100 per share' is the tax of 1 cent 'on each \$20 of actual value or fraction thereof' on a per share basis, or is it based on the actual value of the certificate which may represent a number of shares?" (Answer.) The stamp tax should be computed on the value of each share. Where the actual value of a share of no par value stock is \$5 the tax on ten shares of such stock will be 10 cents. (Letter to The Corporation Trust Company, signed by Deputy Commissioner F. G. Matson, and dated January 26, 1922.)

(The following is a digest of an opinion by the Solicitor of the Bureau of Internal Revenue.)

"Original issue, whether on organization or reorganization," construed.—The question is raised as to what constitutes an original issue of certificates of stock for the purpose of the stamp tax imposed upon the issue of capital stock.

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The M Corporation was incorporated in the year 1916 with an authorized capital stock of \$7,000,000 divided as follows: First preferred stock \$1,000,000, second preferred stock \$1,500,000, common stock \$4,500,000, the certificates issued showed the authorized capitalization, and the stamp tax upon the stock issued was duly paid in accordance with the provisions of the Emergency War Revenue Act of October 22, 1914. On March 10, 1920, the charter of the corporation was amended to reduce the authorized capital stock to \$5,250,000, divided as follows: Preferred stock \$1,500,000, common stock \$3,750,000, and new certificates were prepared showing the changed capitalization. At this time all of the first preferred stock had been retired, and there was outstanding of the original issue \$4,500,000, made up as follows: Second preferred stock \$1,500,000, common stock \$3,000,000. The outstanding second preferred stock was noncumulative and bore 6 per cent interest and had a par value of \$50 per share. The outstanding common stock also had a par value of \$50 per share. The new preferred stock was 8 per cent cumulative stock and had a par value of \$100 per share, and the new common stock was of a par value of \$100 per share. The new preferred stock was exchanged for the outstanding second preferred stock at the ratio of 1 share for 2, and the new common stock was exchanged for the old at the same ratio. It is contended that under the decision of the Circuit Court of Appeals, Second Circuit, in the case of *Edwards v. Wabash Railway Company* (T. D. 3002) and T.D. 3014 no additional stamp tax was due by reason of this exchange.

In the Wabash case 5 per cent profit-sharing preferred stock A and common stock were exchanged for 5 per cent convertible preferred stock B in accordance with a provision contained in the original charter. All of the stock was par-value stock, the entire authorized issue of capital stock had been tax-paid at the time of the original issue, and the total authorized capitalization was not affected by the exchange. Upon these facts the court held:

In the case at bar when the plaintiff paid at the time of its organization the tax of 5 cents for each hundred dollars of face value of its total capital stock, including the A stock, the B stock, and the common stock, such payment was made once for all and constituted the payment of the tax on each original issue of the certificates of stock whenever and to whomsoever delivered. Whenever thereafter the plaintiff delivered the first certificates of the B stock it was not under obligation to pay again the tax on the B certificates. That had been already done. And when subsequently the plaintiff exchanged the certificates of the B stock for certificates of the A stock and of the common stock it was not bound to pay again the tax on the certificates. That tax, too, had been already paid. The exchange of stock was an exchange of original certificates of one kind of stock for original certificates of two other kinds of stock, the tax on all of which had been previously paid.

In the instant case the total authorized capitalization of the corporation was changed and each share of the new stock, whether common or preferred, represented a fractional interest in a different capital stock. A new series of certificates was issued showing the change in the authorized capitalization and substituted for the

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outstanding certificates of the former corporation. The new preferred stock was cumulative convertible stock bearing 8 per cent interest; the stock for which it was substituted was noncumulative convertible stock bearing 6 per cent interest; and the common stock in the reorganized corporation was issued subject to these different charges. Under the circumstances, it is clear that the new stock issued was stock which had never been before issued and was under an authorization not theretofore existing but which arose out of the amendment of charter.

It is therefore believed that the issue of stock in question constituted an original issue on reorganization within the meaning of subdivision 3, Schedule A, Title XI, of the Revenue Act of 1918, and is subject to the tax imposed by that subdivision, and it is so held.

(Opinion of *the Solicitor of Internal Revenue*, by Carl A. Mapes, for the Solicitor. (Sol. Op. 71: 1-21).)

(*Revenue Act of 1921.*)

(Schedule A.—Stamp Taxes.)

Sales or Transfers of Stock.

3. Capital Stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each \$100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share: *Provided*, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the corporation the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agree-

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ment to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

(Regulations No. 40, Revised, as amended to March 1, 1922.)

Article 12. Sales and Transfers Subject to Tax.

(j) The transfer or surrender of stock to a corporation, for the purposes of the corporation, whether or not it intends eventually to sell such stock, is subject to tax.

(t) The transfer of stock of a corporation to be merged to the merging corporation prior to the actual merging and as a condition precedent to the merger is subject to tax.

Article 13. Sales and Transfers not Subject to Tax.

(d) The surrender of the stock of the consolidating corporation in exchange for stock in the consolidated corporation, in the case of consolidation of two or more corporations, is not subject to tax.

(e) The transfer of the stock of a merged corporation in exchange for stock of the merging corporation at the time and as a part of a statutory merger is not subject to tax, nor is the substitution of new certificates for the certificates representing the old stock of the merging corporation.

(Revenue Act of 1921.)

[Schedule A.—Stamp Taxes.]

Conveyances.

6. Conveyances: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property

CONSOLIDATIONS

conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt.

(Regulations 55, Revised, as amended to March 1, 1922, and a special ruling.)

Art. 70. "Sold" defined.—The term "sold" imports the transfer of the absolute or general title for a valuable consideration or price.

Art. 81. Stock in corporation a valuable consideration.—Stock in a corporation is a valuable consideration for the transfer of real property.

Art. 103. Conveyance by corporation to owner of all the capital stock.—A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax.

Stamp tax liability on account of original issue and transfer of stock and conveyance of real property incident to the reorganization of a corporation under the laws of another State, without more.—Reference is made to your letter of February 5, 1920, in which you inquire as to the application of stamp tax in the case where the Co. of Illinois has been reorganized into the [same name] Co. under the laws of the State of Ohio. [See note below.] You are advised that where a company gives up its articles of incorporation in the State of Illinois and is incorporated in the State of Ohio, the application of stamp tax is to be determined by the method followed. In any event stamp tax on original issue applies to the stock to be issued by the new corporation. The transfer of stock among the assets of the old corporation to the new corporation is subject to stamp tax. Conveyance of real property from the old corporation to the new corporation in consideration of the issue of new stock to the old corporation or to its stockholders is subject to stamp tax on the basis of the value of the property. If the new stock is issued to the old corporation the transfer of that stock from the old corporation to its stockholders is subject to stamp tax. If the new stock is issued to the stockholders of the old corporation the transfer of the right to receive that stock from the old corporation is subject to transfer stamp tax additional to the original issue stamp tax. If the old stock is surrendered to the old corporation for extinguishment no transfer stamp tax accrues. If the old stock is surrendered to the new corporation and constitutes it a corporate stockholder that surrender is taxable. (Letter to The Corporation Trust Company, signed by Commissioner Daniel C. Roper, and dated February 26, 1920.)

CONSOLIDATIONS

[Note.—The facts submitted with names omitted, on which the above ruling is based, are as follows:

The Co. was organized many years ago under the laws of Illinois. A new corporation of the same name has been organized under the laws of Ohio and will acquire the property and continue the business of the Illinois corporation.

The Ohio corporation will take over all assets (both real and personal) and assume all liabilities of the Illinois corporation. In payment for the property, the Ohio corporation will deliver to the Illinois corporation certificates of stock issued in the names of the present stockholders and for the number of shares owned by them, respectively, in the Illinois corporation. The Illinois corporation will receive from its stockholders its own shares of stock, in exchange for a like number of shares of the Ohio corporation, and will then be dissolved.

The identical property will remain in the possession of the identical stockholders and the proportionate interest of each stockholder will remain unchanged, the sole purpose of the transaction being merely to domicile the present enterprise in Ohio as a matter of convenience.]

What The Corporation Trust Company and Its Affiliated Companies Do

The business of The Corporation Trust Company is to perform for attorneys those functions connected with corporation affairs which, by their nature, demand a more exclusive, concentrated and uninterrupted attention, and more specialized facilities for their rapid and accurate handling than the busy attorney can afford to devote to them in his own office.

By performing only these special functions, and performing them for thousands of different attorneys, The Corporation Trust Company is enabled to maintain an organization of experts and resources for this particular work, such as no single law office could ordinarily support.

And this entire organization, with all its resources, is made virtually an annex, or department, of each attorney's own office when he utilizes its services.

The very latest information relative to the requirements on corporations under all state and Federal laws and the simplest, most efficient methods for fulfilling them, are kept ready for each attorney using our services, practically as if our organization were simply his own Statistical Department. Representatives at or near various state capitals and in the principal cities are ready at any moment to attend to the filing of his papers, following them through the official channels in person so as to lose not a single moment, to search records and look up facts and report by telephone or telegraph—all practically as if our several hundred employees and representatives over the country were the attorney's own trained deputies.

Expert observers are constantly scanning the acts of all state legislatures and the Federal Congress, the rulings and regulations of Federal and state officials and commissions, and the decisions of both state and United States courts, for developments affecting the duties, privileges, restrictions or taxation of corporations. The fruits of this watchfulness are at the service of the attorney at all times, as if gathered for him alone.

Offices of The Corporation Trust Company System in the principal cities bring all the resources of this complete organization within talking distance of most attorneys' desks.

Supplies Data of Almost Priceless Value in Incorporating a Client's Business

The ability of The Corporation Trust Company to be of service to the attorney begins with the moment a client first broaches the matter of incorporation, reorganization or merger.

At this stage valuable information, often of far-reaching consequences to the organizers in later years, gained from thirty years of intimacy with the experience of thousands of other corporations, can be supplied to the attorney (and to the attorney only) for his guidance in such matters as choosing the state in which to incorporate, deciding on fundamentals of the charter, etc.

After the preliminaries are settled The Corporation Trust Company will then draft for the attorney's approval, and for his assistance only, all papers incidental to the organization, saving his own office the great time and research necessary in drawing up such papers when it is not a daily task.

When these papers have been approved by the attorney, The Corporation Trust Company will take from the attorney's shoulders the intricate detail of getting each document properly filed at its right moment, in the right place, and this for incorporation in any state or territory or possession of the United States, or in Canada.

Very often whole days, or even a week, over the usual time of filing by mail, can be saved through the familiarity of our representatives with the official routine and personnel to be dealt with, and their knowledge of how to secure the quickest action.

Relieves the Attorney of Worries and Bothers

Following organization, The Corporation Trust Company will take the responsibility of maintaining the statutory office and supplying the resident agent, officer or director required by statute in the state of incorporation, and will relieve the attorney of all personal worry over watching the dates prescribed for holding annual stockholders' meetings, for filing of state reports, and for payment of state taxes.

After all details of incorporation and representation in the home state are completed, our organized knowledge of legal requirements in all states saves the attorney from another bother. New and widely differing laws and regulations are constantly being adopted in various states, and court decisions being handed down interpreting them, on the subject of what constitutes doing business in each state. This activity is making the question of where to qualify a client's corporation, and where it is safe not to do so, a more complex and difficult one every day.

The Corporation Trust Company, however, can supply the attorney with a brief, pointed summary of the statutory requirements of each state and the controlling court decisions defining what constitutes doing business there, upon which a correct decision in reference to each state can be made quickly. It will at the same time supply a memorandum of the necessary fees and disbursements for each state, and the steps to be taken.

After the attorney has made his decision from this information as to states in which his client should immediately qualify, The Corporation Trust Company will then draft for his approval all the papers necessary, will take care of all the details of filing them, and furnish the agent, statutory office or other representation demanded by each state law, and perform the same functions in each state as to notices, taxes, reports, receiving of service of process, etc., as in the home state of incorporation.

Complete Trust, Transfer and Registration Facilities Furnished to Corporations

In addition to the above services rendered only to members of the bar, The Corporation Trust Company will, when desired, assume

for the corporation the very complicated and responsible work of transferring and registering the corporate stock and other securities.

State Inheritance Tax and other laws regulating the transfer of decedents' securities, varying widely with different states and carrying heavy penalties for non-observance by the corporation's transfer agent, require the transfer of securities, in any state, to be executed in these days only with the most expert knowledge of the laws of every state.

Very often the laws and regulations of three or more different states enter into one single transfer. Waivers under inheritance tax laws are required by many states before any security owned by a decedent can legally be transferred, regardless of the state in which the corporation itself may be located, or in what state the transfer may be consummated. Other states require court orders. The responsibility which any corporation takes in attempting to transfer and register its own stock is too great for the very small saving to be made.

The Corporation Trust Company has gathered, and keeps up to the minute at all times, a complete summary of the transfer requirements of every state. Completely equipped Transfer Departments are maintained in New York, Jersey City, Philadelphia and Chicago.

Through its Trust Department The Corporation Trust Company also assists corporations by acting as trustee under deed of trust, custodian of securities, escrow depository and depository for reorganization committees.

Specialized "Information Services"

Out of these general activities of The Corporation Trust Company and the careful, prompt gathering and classifying and preserving of official information which they make absolutely essential for this company's performance of its own functions, have grown the specialized, individualized "Services" of The Corporation Trust Company.

Each of these services (listed below) is supplied in loose-leaf form, so superseded information can be immediately removed and destroyed and the new information given its place.

Federal Income Tax Service

Keeps its subscribers posted on the law, every change in it, each new official regulation or ruling, and all important court decisions thereunder.

Federal War Tax Service

Performs as regards the estate, capital stock and other "war" taxes a service similar to that of the Income Tax Service. (Does not touch on law provisions and regulations having to do with wine, spirits, soft drinks, tobacco, narcotics and child labor.)

New York Income Tax Service

Covers all the official information under both the personal and corporation income tax laws of New York.

Congressional Legislative Service

Keeps its subscribers immediately informed on any class of legislation specified, reporting the introduction and supplying copies of new bills and amendments to them, and reporting their progress day by day.

Stock Transfer Guide and Service

Keeps its subscribers completely informed as to requirements of the various states and of the United States with respect to the transfer of stock and other securities, including inheritance tax and stamp tax laws; gives the proper procedure to be followed in each state, reproduces the forms necessary and tells exactly where to obtain them; reports the standards of practice and uniform requirements adopted by the New York Stock Transfer Association, of which the Service has been designated the official organ.

Federal Trade Commission Service

Keeps its subscribers supplied with information as to all complaints received by the Commission, actions thereupon, and all official orders and rulings under the Federal Trade Commission Act and the Clayton Act.

Federal Reserve Act Service

Reports the Federal Reserve Act and the official regulations, etc., thereunder.

Supreme Court Service

Reports decisions of the United States Supreme Court.

THE CORPORATION TRUST COMPANY

37 Wall Street, New York

Affiliated with

The Corporation Trust Company System

15 Exchange Place, Jersey City

Organized 1892

Boston, 53 State Street
(Corporation Registration Co.)
Chicago, 112 W. Adams Street
Pittsburgh, Oliver Bldg.
Washington, Colorado Bldg.
Los Angeles, Title Insurance Bldg.



Philadelphia, Land Title Bldg.
Portland, Me., 281 St. John Street
St. Louis, Federal Reserve Bank Bldg.
Wilmington, du Pont Bldg.
(Corporation Trust Co. of America)
Albany Agency, 158 State Street
Buffalo Agency, Ellicott Square

THE CORPORATION TRUST COMPANY

DEPARTMENTS

- Corporation Department**—Assists attorneys in the incorporation of companies, and in the licensing of foreign corporations to do business in every state and the Canadian provinces. Subsequently furnishes annual statutory representation service, including office or agent required by statute.
- Report and Tax Department**—Notifies attorneys when to hold meetings, pay state taxes and file corporation reports in every state and Canadian province.
- Trust Department**—Acts as trustee under deed of trust, custodian of securities, escrow depositary and depositary for reorganization committees.
- Transfer Department**—Acts as registrar and transfer agent of stocks, bonds and notes.
- Legislative Department (Congressional)**—Makes daily reports on pending legislation in Congress; furnishes copies of bills and new laws.
- Federal Department**—Reports decisions of the United States Supreme Court and rulings of the various Government departments. Furnishes for common carriers agent at Washington to accept service of orders, process, etc., of Interstate Commerce Commission.

SERVICES

These are loose leaf binder Services containing, in addition to the respective Acts as amended and now in effect, all official matters, in force, issued since the passage of the respective original Acts, compiled, cross-referenced, and indexed and kept up to date at all times by means of additional sequentially numbered printed pages sent to subscribers under first-class postage. Formal regulations, informal rulings, Supreme Court decisions, and lower court cases are embodied in the Tax Services.

- Federal Income Tax Service**—Reports official rulings and decisions under the Federal income tax law.
- Federal War Tax Service**—Reports official regulations, etc., under the excess profits tax law and other strictly internal revenue tax laws, except the income tax law, due to the war. (Does not touch on law provisions and regulations having to do with wine, spirits, soft drinks, tobacco, narcotics or child labor.)
- New York Income Tax Service**—Reports regulations and decisions under the New York personal and corporation income tax laws.
- Federal Trade Commission Service**—Reports official orders, rulings, complaints, etc., under the Federal Trade Commission Act and Federal Anti-Trust Act (the Clayton Act).
- Federal Reserve Act Service**—Reports the Federal Reserve Act and the official regulations, etc., issued thereunder.
- Stock Transfer Guide and Service**—Reports uniform requirements for the transfer of securities, extracts from the statutes and decisions of the various states and jurisdictions as to whether and when court orders are necessary, stamp tax laws, rulings, statutes and decisions in general affecting stock transfers, when inheritance tax waivers are required and how to obtain such waivers, giving rates, and reproducing the forms used for non-resident estates in inheritance tax matters. Reports new and amendatory legislation, decisions, etc. Adopted as the official organ of the New York Stock Transfer Association and used generally throughout the United States by attorneys, trust companies, banks, brokers, and others interested in the prompt and accurate transfer and registration of securities.

THE CORPORATION TRUST COMPANY

37 WALL STREET, NEW YORK

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